

N. KEITH CHAMBERS
EXECUTIVE DIRECTOR

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:

**PEGGY ANN GRIFFIN,
Complainant,**

and

**METRO SENIORS IN ACTION,
Respondent.**

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) **Charge No: 2008CN0387**
) **EEOC No: N/A**
) **ALS No: 08-0405**
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RECOMMENDED ORDER AND DECISION

This matter is before me on Respondent's Motion to Dismiss the Complaint for lack of jurisdiction, filed May 13, 2009. Complainant filed no response to the motion, although allowed time to do so. The Illinois Department of Human Rights (Department) is an additional statutory agency that has issued state actions in this matter. It is, therefore, named herein as an additional party of record.

FINDINGS OF FACT

The following findings were made from the record:

1. On September 18, 2008, Complainant, on her own behalf, filed a Complaint with the Illinois Human Rights Commission (Commission) alleging violations of the Illinois Human Rights Act (Act), 775 ILCS 5/1-101 *et seq.*
2. Respondent filed a verified response to the Complaint on November 17, 2008.
3. On April 29, 2009, both parties appeared through respective counsel. An order was issued granting leave for Respondent to file a motion to dismiss for lack of jurisdiction. Complainant was ordered to file a response to the motion no later than May 26, 2009, and Respondent was ordered to file a reply no later than June 5, 2009. The motion was set for hearing on June 9, 2009.
4. Respondent filed a motion to dismiss the Complaint for lack of jurisdiction on May 13, 2009. Complainant did not file a response to the motion.

5. On June 9, 2009, Respondent appeared through counsel for hearing on the motion. Complainant did not appear.

DETERMINATION

Respondent's motion to dismiss must be granted as the Commission lacks jurisdiction over this Complaint.

CONCLUSION OF LAW

The Commission lacks jurisdiction over this Complaint because it was not filed in accordance with sections 5/7A-102(G)(1) and 5/7A-102(G)(2) of the Act.

DISCUSSION

On September 18, 2008, Complainant, on her own behalf, filed a Complaint with the Commission. Respondent filed a verified response to the Complaint on November 17, 2008. On April 29, 2009, both parties appeared through respective counsel. An order was issued granting leave for Respondent to file a motion to dismiss for lack of jurisdiction. Complainant was ordered to file a response no later than May 26, 2009, and Respondent was ordered to file a reply no later than June 5, 2009. Hearing on the motion was set for June 9, 2009.

Respondent filed a motion to dismiss the Complaint for lack of jurisdiction on May 13, 2009. Complainant did not file a response to the motion. On June 9, 2009, Respondent appeared through counsel for hearing on the motion. Complainant did not appear.

Respondent maintains that Complainant filed the underlying perfected Charge with the Department on August 23, 2007. Thereafter, Complainant agreed to extend the Department's investigation period by 300 days. Due to the extension agreement, Respondent calculates the Department's investigative period to end on June 19, 2009. Respondent argues that the Commission lacks jurisdiction over this matter because the Complaint, which was filed September 18, 2008, was filed while the Department still

exercised jurisdiction over the Charge. Complainant has put forth no reason to deny the motion. Complainant submits no opposition to this motion and did not appear at scheduled hearing on the motion.

The Commission has held that it will not search the record to find reasons to deny a motion. If a motion appears valid on its face and if the other side cannot put forth reasons to deny a motion, the motion will be granted. *Jones and Burlington Northern Railroad*, IHRC, 1704, June 23, 1986.

The Act at Section 5/7A-102(G)(1), in relevant part, states:

When a charge of a civil rights violation has been properly filed, the department, within 365 days thereof or within any extension of that period agreed to in writing by all parties, shall either issue and file a complaint in the manner and form set forth in this Section or shall order that no complaint be issued and dismiss the charge with prejudice without any further right to proceed except in cases in which the order was procured by fraud or duress...

The Act at Section 5/7A102 (G)(2), in relevant part, states:

Between 365 and 395 days after the charge is filed, or such longer period agreed to in writing by all parties, the aggrieved party may file a complaint with the Commission, if the Director has not sooner issued a report and determination pursuant to paragraphs (D)(1) and (D)(2) of this Section...The aggrieved party shall notify the Department that a complaint has been filed and shall serve a copy of the complaint on the Department on the same date that the complaint is filed with the Commission.

The record supports that the Complaint was not properly filed in accordance with statutory parameters; therefore, there is no basis for jurisdiction before the Commission.

RECOMMENDATION

I recommend that this Complaint be dismissed, but that the underlying Charge not be dismissed in order to allow the Department to complete its investigation.

ENTERED: June 11, 2009

HUMAN RIGHTS COMMISSION

By: _____
SABRINA M. PATCH
Administrative Law Judge
Administrative law Section